IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 804

NAVIOS CORPORATION
UNIVERSE TANKSHIPS, INC.

Petitioners

v.

NATIONAL MARITIME UNION OF AMERICA
SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA
INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 420
INTERNATIONAL MARITIME WORKERS UNION
STEVE CARDULLO
JAMES T. MOOCK
RICHARD ASKEW
LOUIS PARISE
SHANNON J. WALL

Respondents

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

H. FORTESCUE G. SHOE,
W. LANG,

HERBERT BROWNELL,
FAIL K. SHAW,
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Petition for Writ of Certiorari in the above entitled matter, together with Petition for Writ of Certiorari in No. 805 filed by the Global Seamen's Union, was denied by the Court on April 24, 1961. Each of these petitions presented as an issue ripe for decision by the Court the question of whether the National Labor Relations Board

has jurisdiction over disputes involving representation by labor organizations of alien seamen employed on a foreign ship engaged in international commerce on the basis of the stock ownership of the foreign corporations which own and operate such vessel, where Congress has not affirmatively asserted an intent to grant such jurisdiction.

This is an issue, we submit, of grave consequence to long settled governmental policies by which American citizens have been encouraged to invest in foreign shipping, as well as in other foreign enterprises. An early decision by this Court on the issue is essential to stabilize industrial relations involving international commerce and to clarify the rights of parties under the labor laws of the United States and to give effective direction to the interpretation and administration of the National Labor Relations Act.

It is true that the issue involved, in part, is also involved in other cases pending before the National Labor Relations Board and in one case decided by that Board, but it will take a considerable amount of time before those cases are perfected for decision by this Court, whereas this problem now is ready for decision in the present case. Furthermore, no other case of which we are aware, except three which will probably take years to reach this Court, involves the important point of the effect upon the jurisdiction of the National Labor Relations Board of representation of the employees involved by a foreign union completely located outside of this country.[1]

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[1] In *United Fruit Company and National Maritime Union of America, AFL-CIO, Empresa Hondurena de Vapores, S. A., Intervenor*, Case No. 2-RC-16379, in which the National Maritime Union is seeking an election, the seamen have been represented by a Honduran Union, Sociedad Nacional de Marinos de Honduras. The National Labor Relations Board has not conducted an election on this petition which was filed on November 13, 1959. On April 7, 1960, an individual, Kenton G. Tibbets, through a firm of attorneys who represent some of respondents herein, filed with the Second

While resolution of the issue involved is left undecided, disruption of international commerce carried by foreign flag vessels manned by foreign crews continues, and the rights of the parties are left uncertain. We are informed that since the denial of the Petition for Writ of Certiorari in this matter, the National Maritime Union of America, one of the Respondents herein, has picketed and prevented the unloading of another foreign flag vessel in the harbor of New York City. (See *New York Times*, April 28, 1961.)[2] The history of this dispute gives evidence that a continuing series of such actions threatens other foreign ships. See Petition for Certiorari, p. 26. Indeed, at last report, two of the largest American unions of merchant marine officers, the National Marine Engineers Beneficial Association and the International Organization of Masters, Mates and Pilots, announced the opening of a "drive" against alleged "runaway" foreign flag vessels. Among these would be included vessels registered in Greece and British Commonwealth nations (*New York Times*, May 1, 1961).

Also, since the date of the filing of the Petition for Certiorari in this matter, the Republic of Panama has lodged

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Region of the National Labor Relations Board a petition for an election to prevent a labor organization of the Cayman Islands, B. W. I., the Global Seamen's Union, and Universe Tankships, Inc. from continuing a union shop provision in the collective bargaining agreement in effect aboard the SS ORE METEOR. Case No. 2-UD-91. On May 13, 1960, the International Maritime Workers Union, through the firm of attorneys referred to above, filed an unfair labor practice charge with the Second Region of the National Labor Relations Board against Global Seamen's Union, located at George Town, Grand Cayman, B. W. I. These last two cases are pending without formal action on the part of the Board.

[2] The *New York Times* account states the ship involved is owned by a Panamanian subsidiary of Reynolds Metals Company. According to an account in the *New York Times*, April 3, 1961, the International Maritime Workers Union has filed a petition with the National Labor Relations Board for a representation election involving the Panamanian flag fleet of the Reynolds Metal Company.

a strong protest with our government against the assertion of jurisdiction by the National Labor Relations Board over the internal labor relations of ships flying foreign flags. It is noted that Panama's Foreign Minister not only called attention to the fact that the assertion of such jurisdiction would violate "century old rules of international law to the effect that vessels are governed as to their internal regime by the laws of the flag they fly," but asserted that such actions might have "grave and serious repercussions" on the part of nations whose sovereignty has been invaded. (See *New York Times*, March 27, 1961.) It was to avoid just such a situation that this Court in *Benz v. Compania Naviera Hidalgo*, 353 U.S. 138, 147, denied the jurisdiction of the National Labor Relations Act over foreign seamen employed aboard a foreign ship in the absence of "an affirmative intent of Congress clearly expressed."

Awaiting clarification of the jurisdiction of the National Labor Relations Board over the labor relations of foreign flag ships and the foreign seamen employed aboard those ships, are a number of pending cases lodged with Regional Offices of the National Labor Relations Board, (1) requesting elections among alien seamen on foreign ships, (2) requesting the National Labor Relations Board to void provisions of collective bargaining agreements held by a foreign union representing foreign seamen aboard these foreign flag ships and (3) alleging unfair labor practices by foreign corporations in respect to alien seamen employed on foreign flag ships.[3] These cases may be held in continued

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[3] See cases referred to in footnotes 1 and 2, supra. Also presently pending are charges filed against *Universe Tankships, Inc., et al.*, Case No. 2-CA-7194, originally filed February 2, 1960; *Peninsular & Occidental Steamship Co., et al.*, Case No. 12-CA-255, pending before the National Labor Relations Board for decision; and *West India Fruit & Steamship Company, Inc.*, 130 NLRB No. 46, recently decided by the Board.

abeyance pending final decision of this Court upon the jurisdiction of the Board. On the other hand should the National Labor Relations Board proceed with these matters in the face of grave doubts as to its jurisdiction, many parties will be prejudiced thereby.

Respondents' basic assertion is that the jurisdiction of the National Labor Relations Board attaches to an extra-territorial enterprise where that enterprise, the ORE MONARCH in this case, is owned and operated by a foreign corporation in which American citizens have investments or financial interests. The Respondents also refer to other alleged American contacts which are claimed to support their position, but these are obviously rhetorical rather than factual, or are inconsequential. Thus, the frequent reference to "runaway ships" and "transfer to foreign flags." In fact, the ORE MONARCH was built in Japan and has never been registered under the laws of the United States. In reality the Respondents' complaint is against foreign investments by Americans. However, the mere fact that a foreign corporate activity may be ultimately financed by citizens of the United States would not create jurisdiction in the National Labor Relations Board over that activity in the absence of a clear affirmative expression of Congress. See *Foley Bros. v. Filardo*, 336 U.S. 281, 285, 286 (1949).

Nor is the State Court required by *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), to await a decision by the National Labor Relations Board before granting a remedy in cases such as the present matter. Indeed, it is readily apparent from a comparison of the *Garmon* case with the *Benz* case that the *Garmon* case does not oust the State court of jurisdiction in this matter. Thus, *Garmon* involved a damage suit arising from picketing activity designed to affect the labor relations of

American employees on an American building site. The Court held that the State Court was pre-empted from asserting jurisdiction. However, in *Benz*, which also involved a damage suit, but arose from picketing activity designed to affect the labor relations of *foreign seamen on a foreign ship*, the Supreme Court held that jurisdiction over that case did not lie within the ambit of the National Labor Relations Act because that Act applies only to "working men of our country."

There is no decision of this Court to the contrary, and the decisions of the lower courts involving the Jones Act are no authority for the proposition that the ORE MONARCH may be treated as an American ship or that the foreign nationals who compose her crew are "workingmen of our own country" for the purposes of the National Labor Relations Act. In fact, there is no decision of this Court that the Jones Act, itself, would apply to circumstances like those in this case. But even if it be assumed, for the sake of argument, that the Court would so rule, it would not follow that the Taft-Hartley Act should also apply. It would be one thing to hold that a seaman on a foreign-registered vessel owned by a foreign corporation in which Americans are interested should have an individual cause of action to recover for personal injuries suffered in the course of his employment; but it would be quite another to hold that Congress intended a federal administrative agency to assume representation and unfair-labor-practice jurisdiction of, and to regulate and control, the labor relations between the entire crew and the owner of the vessel, throughout the world and in the face of possible competing claims to such jurisdiction by foreign governmental agencies.

Benz, moreover, makes clear that Congress did not intend that the jurisdiction of the National Labor Relations

Act should extend to foreign seamen aboard a foreign ship. It is argued that *Benz* is inapplicable because of the financial interest of citizens of the United States in the foreign corporations which own these ships. Activities of the Respondents based upon this claim have raised and will continue to raise serious questions with respect to the interpretation and administration of the labor laws of the United States, and the rights of parties thereunder, which require an early resolution by this Court inasmuch as these matters have had and threaten in the future to have grave consequences to the peace and stability of international trade, the defense policies of the United States and its foreign relations with friendly countries.

CONCLUSION

For the foregoing reasons supported by circumstances occurring since the filing of the Petition for Certiorari and arguments not previously presented, we submit that certiorari should be granted in this matter.

Respectfully submitted,

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CERTIFICATE

This will certify that this Petition for Rehearing of the Order of the Supreme Court of the United States denying Petition for a Writ of Certiorari is presented in good faith and not for delay, and is supported by circumstances intervening since the Petition for Certiorari and other grounds not previously presented to the Court to which the enclosed petition is restricted as required by Rule 58 of the Rules of the Court.

EARLE K. SHAWE